IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 251 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

BALKRISHNA HARIVALLABHDAS

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Appearance:
MR AKIL QURESHI FOR MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 21/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, at the instance of the revenue, the following question is referred to us in respect of assessment year 1977-78 :-

"Whether, the order of the Income-tax officer in holding that the assessee is not entitled to interest under section 244(1A) is appealable under section 246 of the I.T. Act, 1961 ?"

2. At the hearing of the reference, Mr Akil Qureshi, learned counsel for the revenue fairly states that the question raised herein is squarely covered against the revenue in CIT vs. T.V. Sundaram Iyengar & Sons Ltd., (1999) 236 ITR 524. In the said decision, the Madras High Court has held that the appeal provisions should be construed in a reasonable manner. Interest on refund is really a part of the refund and interest and refund are not two different things. Where there is a total denial of liability on the part of the revenue to pay interest on refund, an appeal would lie to the next appellate authority.

3. Following the aforesaid decision, we answer the question in the negative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-